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SENATE BILL DRS35177-TG-1

Short Title: Victims' Fair Treatment Act. (Public)

Sponsors: Senators Britt, Perry, and Galey (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE VICTIMS' FAIR TREATMENT ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

5 "**Chapter 1H.**

6 "**Contributory Fault.**

7 "**§ 1H-1. Short title.**

8 This Chapter may be cited as the Victims' Fair Treatment Act.

9 "**§ 1H-5. Definitions.**

10 The following definitions apply in this Chapter:

11 (1) Contributory fault. – Contributory negligence, misuse of a product,
12 unreasonable failure to avoid or mitigate harm, and assumption of risk unless
13 the risk is expressly assumed in a legally enforceable release or similar
14 agreement.

15 (2) Person. – An individual, corporation, business trust, estate, trust, partnership,
16 limited liability company, association, joint venture, public corporation,
17 government, or governmental subdivision, agency, or instrumentality, or any
18 other legal or commercial entity.

19 (3) Released person. – A person that would be liable for damages to a claimant
20 for personal injury or harm to property if the person had not been discharged
21 from liability under G.S. 1H-35 or G.S. 1H-40.

22 (4) Responsibility. – With respect to a claim for damages for personal injury or
23 harm to property, the legal consequences of an act or omission that is the basis
24 for liability or a defense in whole or in part.

25 "**§ 1H-10. Effect of contributory fault.**

26 (a) Except as otherwise provided in subsection (b) of this section, in an action seeking
27 damages for personal injury or harm to property based on negligence or on any other claim for
28 which the claimant may be subject to a defense in whole or in part based on contributory fault,
29 any contributory fault chargeable to the claimant diminishes the amount that the claimant
30 otherwise would be entitled to recover as compensatory damages for the injury or harm by the
31 percentage of responsibility assigned to the claimant pursuant to G.S. 1H-15.

32 (b) If the claimant's contributory fault is greater than the combined responsibility of all
33 other parties and released persons whose responsibility is determined to have caused personal
34 injury to or harm to property of the claimant, the claimant may not recover any damages.



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1 (c) In a jury trial, the court shall instruct the jury regarding the legal effect of its answers
2 to interrogatories, made pursuant to G.S. 1H-15, on a claimant's right to recover damages under
3 subsection (b) of this section.

4 **"§ 1H-15. Finding damages; attribution of responsibility.**

5 (a) In an action to recover damages for personal injury or harm to property involving the
6 responsibility of more than one party or a released person, the court shall instruct the jury to
7 answer special interrogatories or, if there is no jury, make all of the following findings:

8 (1) Stating the amount of damages that a claimant would be entitled to recover if
9 any contributory fault were disregarded.

10 (2) Stating, as to each claim, the percentage of the total responsibility of all the
11 parties and released persons attributed to each claimant, defendant, and
12 released person that caused the injury or harm.

13 (3) Regarding whether any of the parties or released persons acted in concert or
14 with an intent to cause personal injury or harm to property.

15 (4) Regarding any other issue of fact fairly raised by the evidence which is
16 necessary to make a determination under G.S. 1H-20 or enter judgment under
17 G.S. 1H-25.

18 (b) In determining percentages of responsibility, the trier of fact shall consider both:

19 (1) The nature of the conduct of each party and released person determined to be
20 responsible.

21 (2) The extent of the causal relation between the conduct and the damages
22 claimed.

23 (c) The court shall determine the extent to which the responsibility of one party, which
24 is based on the act or omission of another party, warrants that the parties be treated as a single
25 party for the purpose of submitting interrogatories to the jury or making findings under subsection
26 (a) of this section.

27 **"§ 1H-20. Determining damage award; reallocation of uncollectible share.**

28 (a) After the trier of fact has received answered interrogatories from the jury or made
29 findings pursuant to G.S. 1H-15, the court shall determine, in accordance with the percentages
30 of responsibility found, the monetary amount of any award of damages to a claimant, the amount
31 of the several share for which each party found liable is responsible, and any amount attributable
32 to a released person.

33 (b) After the court has made its determinations pursuant to subsection (a) of this section,
34 a claimant, no later than 90 days after the entry of judgment for the plaintiff, may move the court
35 to determine whether all or part of the amount of the several share for which a party is liable will
36 not be reasonably collectible and request reallocation. If the court based on a preponderance of
37 the evidence determines that the party's share will not be reasonably collectible, the court shall
38 make findings reallocating the uncollectible share severally to the other parties, including the
39 claimant, and any released person. Reallocation must be made in the proportion that each party's
40 and released person's respective percentage of responsibility bears to the total of the percentages
41 of responsibility attributed to the parties, including the claimant, and any released person but not
42 including the percentage being reallocated.

43 (c) A party whose liability is reallocated remains liable to a claimant for any additional
44 share of responsibility allocated to the claimant. A party that discharges an additional share of
45 responsibility allocated to it pursuant to subsection (b) of this section has a right of
46 reimbursement from the party from which the share was reallocated. Upon motion, the court in
47 the judgment entered under G.S. 1H-25 shall declare the rights and obligations resulting from the
48 reallocation, including any rights and obligations with regard to subrogation or a secured
49 position. If any party to whom reallocation has been made holds a secured position with regard
50 to the share reallocated, each party to whom reallocation has been made has a proportionate share
51 in the secured position. Any amount recovered under this subsection from a party whose liability

1 has been reallocated must be distributed to each of the parties to whom the reallocation was made
2 in the same proportion as the original reallocation.

3 (d) Reallocation does not make a released person liable for any reallocated share of
4 responsibility unless the release or other agreement so provides.

5 (e) If a motion for reallocation is made, any party may conduct discovery regarding any
6 issue relevant to the motion.

7 **"§ 1H-25. Entering and modifying judgment.**

8 (a) After determining an award of damages to a claimant and the amount of the several
9 share, including any reallocated share, for which each party found liable is responsible, the court
10 shall enter judgment severally against each party adjudged liable, except in the following
11 situations:

12 (1) If two or more parties adjudged liable acted in concert or with an intent to
13 cause personal injury to, or harm to property of, the claimant, the court shall
14 enter judgment jointly and severally against the parties for their joint share.

15 (2) If a party is adjudged liable for failing to prevent another party from
16 intentionally causing personal injury to, or harm to property of, the claimant,
17 the court shall enter judgment jointly and severally against the parties for their
18 combined shares of responsibility.

19 (3) If a party is adjudged liable for the act or omission of another party under
20 G.S. 1H-15(c), the court shall enter judgment jointly and severally against the
21 parties for their joint share.

22 (4) If a statute of this State, other than this Chapter, so requires, the court shall
23 enter judgment jointly and severally or otherwise conform the judgment to the
24 statute.

25 (5) If more than one defendant is found responsible for indivisible damages, then
26 any defendant to whom more than fifty percent (50%) of the total
27 responsibility of all parties for such indivisible damages is attributed shall be
28 jointly and severally liable for the total amount of such indivisible damages.

29 (b) If a court grants a motion for reallocation pursuant to G.S. 1H-20 after judgment is
30 entered, the court shall modify the judgment to declare the rights and obligations resulting from
31 the reallocation, including any rights and obligations with regard to subrogation or a secured
32 position.

33 **"§ 1H-30. Right of contribution and indemnity; third-party action.**

34 (a) Except as otherwise provided in subsection (b) of this section, a party that is jointly
35 and severally liable with one or more other parties under this Chapter has a right of contribution
36 from another party jointly liable for any amount the party pays in excess of the several amount
37 for which the party is responsible. A party against which contribution is sought is not liable for
38 more than the monetary amount of the party's several share of responsibility determined pursuant
39 to G.S. 1H-20.

40 (b) A party that is adjudged liable for the act or omission of another party under
41 G.S. 1H-25(a)(3) has a right of indemnification from the other party.

42 (c) A party that is subject to liability for injury to, or harm to property of, a claimant
43 under this Chapter has a right:

44 (1) To join a person that is also subject to liability to the claimant for all or part
45 of the same injury or harm if the claimant has not sued the person.

46 (2) To seek contribution or indemnity, whichever is appropriate, from another
47 person whose liability is not determined in the proceeding in which the party
48 is adjudged liable if the other person is responsible for all or part of the
49 claimant's injury or harm.

50 (d) A claim for contribution or indemnity may be asserted in the original action or in a
51 separate action.

1 **"§ 1H-35. Effect of release.**

2 (a) A release, covenant not to sue, covenant not to execute a judgment, or similar
3 agreement by a claimant and person subject to liability discharges the person from liability to the
4 claimant to the extent provided in the agreement and from liability for contribution to any other
5 person subject to liability to the claimant for the same injury or harm. The agreement does not
6 discharge any other person subject to liability upon the same claim unless the agreement so
7 provides.

8 (b) The amount of the claim of the releasing person under subsection (a) of this section
9 against other persons jointly and severally liable for the same injury or harm for which the
10 released person would have been liable is reduced by the percentage of responsibility attributed
11 to the released person pursuant to G.S. 1H-15.

12 (c) A release, covenant not to sue, covenant not to execute a judgment, or similar
13 agreement extinguishes any claim for contribution or indemnity that the released person would
14 have had against another person that would have been jointly and severally liable with the
15 released person.

16 **"§ 1H-37. Judicial determination as to amount reasonably collectible from a settling party.**

17 (a) Any party to a proposed settlement of a claim in an action subject to this Chapter may
18 apply to the court for a determination of whether or not the proposed settlement involves the
19 payment of all funds that reasonably could be collected from the settling party or parties. If the
20 proposed settlement is of a claim for which there is a pending civil action, the application shall
21 be made to the court in which the action is pending. If the proposed settlement is of a claim for
22 which there is no pending civil action, the application shall be made to the resident superior court
23 judge of the county in which the cause of action arose or where the claimant resides, or to a
24 presiding superior court judge of either county, to be determined in a special proceeding initiated
25 by the applicant.

26 (b) After a hearing upon due notice, with all parties having the opportunity to be heard
27 and present evidence, the court shall determine, in the court's discretion, whether the proposed
28 settlement involves the payment of all funds that reasonably could be collected from the settling
29 party or parties.

30 (c) In making a determination pursuant to this section, the court should consider:

31 (1) The likelihood of success by the claimant at trial against the settling defendant
32 or defendants.

33 (2) The amount of applicable primary and excess insurance.

34 (3) Whether there are insurance coverage disputes in the case.

35 (4) Whether the settling defendant or defendants propose to pay all or nearly all
36 of the applicable insurance coverage.

37 (5) The liquid assets of the settling defendant or defendants.

38 (6) The assets potentially available to the claimant through execution on any
39 judgment obtained against the settling defendant or defendants, and the degree
40 of difficulty and likelihood of being able to recover those assets under the
41 circumstances, including whether a settling defendant has other creditors
42 already ahead in line.

43 (7) The equities of the case and whether a settlement is in the interests of justice
44 and the proper administration of the courts.

45 (8) Any other factors that weigh for or against the proposed settlement, under all
46 of the circumstances.

47 (d) If the court determines that the amount of the proposed settlement involves payment
48 of all funds that reasonably could be collected from the settling party or parties, then the claimant
49 may proceed with the proposed settlement. If a judgment is entered against the nonsettling
50 defendant or defendants that exceeds the amount of all settlements between the claimant and
51 settling defendants, the claimant shall be entitled to recover the amount of the verdict from the

1 nonsettling defendant or defendants, less the amount of all settlements with settling defendants.
2 If a judgment is entered in favor of a claimant against nonsettling defendants that is less than the
3 amount of all settlements between the claimant and settling defendants, the claimant shall recover
4 nothing from nonsettling defendants.

5 (e) If the court determines that the amount of the proposed settlement does not involve
6 payment of all funds that reasonably could be collected from the settling party or parties, the
7 court shall also determine, in the court's discretion, the amount of a settlement that would involve
8 payment of all funds that reasonably could be collected from the settling party or parties.

9 **"§ 1H-40. Reduction of workers' compensation lien and subrogation right; notice and**
10 **intervention.**

11 (a) If an employer or workers' compensation insurer asserts a lien or right of subrogation
12 under G.S. 97-10.2, the employer or insurer is deemed to have had its obligation to the employee
13 for the compensation benefits paid or payable discharged under G.S. 1H-35 as if the employer or
14 insurer had received a release, covenant not to sue, or covenant not to execute a judgment from,
15 or entered a similar agreement with, the employee. In such a case, any percentage of
16 responsibility that the employer would have had for the employee's injury, were the employer
17 not immune under Article 1 of Chapter 97 of the General Statutes, must be determined as that of
18 a released person pursuant to G.S. 1H-15, and the lien or right of subrogation is reduced by the
19 monetary amount of the employer's percentage of responsibility, if any, in the employee's action
20 against the third party.

21 (b) A party asserting that an employer's or workers' compensation insurer's lien or right
22 of subrogation should be reduced under subsection (a) of this section because of the employer's
23 fault shall give notice to the employer or workers' compensation insurer. In that case, the
24 employer or insurer may intervene in the employee's action for personal injury.

25 **"§ 1H-45. Uniformity of application and construction.**

26 In applying and construing this Chapter, consideration must be given to the need to promote
27 uniformity of the law with respect to its subject matter among states that enact it.

28 **"§ 1H-50. Severability clause.**

29 If any provision of this Chapter or its application to any person or circumstance is held
30 invalid, the invalidity does not affect other provisions or applications of this Chapter that can be
31 given effect without the invalid provision or application, and to this end, the provisions of this
32 Chapter are severable."

33 **SECTION 2.** G.S. 1B-2 reads as rewritten:

34 **"§ 1B-2. Pro rata shares.**

35 In determining the pro rata shares of tort-feasors in the entire ~~liability~~liability, all of the
36 following apply:

- 37 (1) Their relative degree of fault shall not be ~~considered~~considered, unless
38 liability is based upon acts or omissions that constitute contributory fault as
39 defined in G.S. 1H-5, in which case the provisions of Chapter 1H of the
40 General Statutes shall be the basis for determining the allocation of liability.
41 (2) If equity requires, the collective liability of some as a group shall constitute a
42 single ~~share~~share.
43 (3) Principles of equity applicable to contribution ~~generally~~—shall
44 apply ~~generally~~."

45 **SECTION 3.** Article 31 of Chapter 143 of the General Statutes is amended by adding
46 a new section to read:

47 **"§ 143-300.1B. Contributory fault applies to this Article.**

48 Subject to the provisions of G.S. 143-300.1A, when liability under this Article is based upon
49 acts or omissions that constitute contributory fault as defined in G.S. 1H-5, the provisions of
50 Chapter 1H of the General Statutes shall apply."

51 **SECTION 4.** G.S. 99B-1.1 reads as rewritten:

1 **"§ 99B-1.1. ~~Strict liability.~~liability; contributory fault.**

2 (a) There shall be no strict liability in tort in product liability actions.

3 (b) When liability is based upon acts or omissions that constitute contributory fault as
4 defined in G.S. 1H-5, the provisions of Chapter 1H of the General Statutes shall apply to product
5 liability actions under this Chapter."

6 **SECTION 5.** G.S. 28A-18-2 is amended by adding a new subsection to read:

7 "(e) When liability under this section is based upon acts or omissions that constitute
8 contributory fault as defined in G.S. 1H-5, the provisions of Chapter 1H of the General Statutes
9 shall apply to actions for damages under this section."

10 **SECTION 6.** G.S. 1A-1, Rule 7(a), reads as rewritten:

11 "(a) Pleadings. – There shall be a complaint and an answer; a reply to a counterclaim
12 denominated as such; an answer to a crossclaim, if the answer contains a crossclaim; a third-party
13 complaint if a person who was not an original party is summoned under the provisions of Rule
14 14; and a third-party answer, if a third-party complaint is served. ~~If the answer alleges~~
15 ~~contributory negligence, a party may serve a reply alleging last clear chance.~~ No other pleading
16 shall be allowed except that the court may order a reply to an answer or a third-party answer."

17 **SECTION 7.** G.S. 1A-1, Rule 8(c), reads as rewritten:

18 "(c) Affirmative defenses. – In pleading to a preceding pleading, a party shall set forth
19 affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory
20 ~~negligence, fault,~~ discharge in bankruptcy, duress, estoppel, failure of consideration, fraud,
21 illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of
22 frauds, statute of limitations, truth in actions for defamation, usury, waiver, and any other matter
23 constituting an avoidance or affirmative defense. Such pleading shall contain a short and plain
24 statement of any matter constituting an avoidance or affirmative defense sufficiently particular
25 to give the court and the parties notice of the transactions, occurrences, or series of transactions
26 or occurrences, intended to be proved. When a party has mistakenly designated a defense as a
27 counterclaim or a counterclaim as a defense, the court, on terms, if justice so requires, shall treat
28 the pleading as if there had been a proper designation."

29 **SECTION 8.** This act becomes effective January 1, 2022, and applies to actions
30 originally filed on or after that date.